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MREC

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
LORENZO C. SMITH

Lorenzo C. Smith (Smith) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Smith's license as a Real Estate Broker Associate, no. 1999010470, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2012. The MREC and Smith jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Smith acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Smith may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Smith knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Smith acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Smith stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Smith's license as a Real Estate Broker Associate, license no. 1999010470, is subject

to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Smith in Part II herein is based only on the agreement set out in Part I herein. Smith understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Smith herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2012, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo (as amended), relating to real estate salespersons and brokers.
2. Smith holds a license as a Real Estate Broker Associate, license no. 1999010470. Smith's license was current and active at all relevant times, except for from May 2, 2009 to November 15, 2012 when it was suspended pursuant to § 324.010, RSMo Supp. 2012.

3. On November 8, 2005, Smith pled guilty to Conspiracy to Distribute a Controlled Substance in Case No. 4:05-cr-00267-ODS-1, United States District Court, Western District of Missouri under 21 U.S.C. 841(a)(1), (b)(1)(B), and 846, which state:

§ 841 Prohibited Acts A

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance[.]

§ 846 Attempt and Conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

4. On March 23, 2006, Smith was sentenced in the above named case to 87 months in prison, followed by four years probation, and ordered to pay a \$100.00 Mandatory Special Assessment and a \$10,000 fine.

5. On August 3, 2006, Smith signed and submitted an Application for License/Information change to the MREC requesting to place his license on inactive status. On his application, Smith falsely answered "no" to the question "[h]ave you been finally adjudicated and found guilty, or entered a

plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, whether or not sentence was imposed? NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, Misdemeanor and Felony convictions, and alcohol related offenses, ie. DWI and BAC. Check yes if not previously disclosed to this Commission and provide the date of the conviction and/or pleading, nature of the offense, court location, and case number.”

6. On September 11, 2006, Smith signed and submitted an Application to Renew Broker-Officer License to the MREC. On his application, Smith falsely answered “no” to the question “[h]ave you been finally adjudicated and found guilty or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this or any other state or of the United States whether or not sentence was imposed, including suspended imposition of sentence, suspended execution of sentence and misdemeanor charges that you have not previously disclosed to this Commission?”

7. On April 21, 2008, Smith signed and submitted an Application to Renew an Inactive Broker License to the MREC. On his application, Smith answered “no” to the question “[h]ave you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution

under the laws of this or any other state or of the United States whether or not sentence was imposed, including suspended imposition of sentence, suspended execution of sentence and misdemeanor charges that you have not previously disclosed to this Commission?"

8. Section 339.040, RSMo, states:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing[.]

9. Smith's failure to disclose his guilty plea on his 2006 Application for License/Information Change, his 2006 Application to Renew Broker-Officer License, and his 2008 Application to Renew Inactive Broker License constitutes a lack of good moral character and a lack of a good reputation for honesty, integrity and/or fair dealing.

10. Smith's guilty plea to Conspiracy to Distribute a Controlled Substance was to an offense reasonably related to the qualifications, functions and duties of a real estate broker associate and which involved moral turpitude.

11. Smith's failure to disclose his guilty plea on his 2006 Application for License/Information Change, his 2006 Application to Renew Broker-Officer License, and his 2008 Application to Renew Inactive Broker License constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith and/or incompetence, misconduct, and/or gross negligence.

12. Based on Smith's conduct, as stated above, cause exists to discipline his license pursuant to § 339.100.2(10), (16), (18), and (19), RSMo Supp. 2012, which states in pertinent part:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Supp. 2012.

13. **Smith's license is on probation.** Smith's license as a Real Estate Broker is hereby placed on PROBATION for a period of FIVE (5) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Smith shall be entitled to practice as a Real Estate Broker under Chapter 339, RSMo, as amended, provided Smith adheres to all the terms of this agreement.

14. Terms and conditions of the disciplinary period. The terms and conditions of the disciplinary period are as follows:

- A. Smith shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Smith shall notify the MREC in writing within ten (10) days of any change in this information.
- B. Quarterly reports. Smith shall obey and comply with all terms and conditions of probation for his criminal supervision. Smith shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with his criminal probation, parole, and/or release, as well as his compliance with the terms and conditions of this Settlement Agreement. Smith is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Smith shall submit the first such report so that the MREC receives it on or before April 10, 2014.
- C. Smith shall timely renew his real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license in a current and

active status. During the disciplinary period, Smith shall not place his real estate license on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Smith may surrender his real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Smith applies for a real estate license after surrender, Smith shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

- D. Smith shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.
- E. Smith shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

- F. During the probationary period, Smith shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.
- G. Smith shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Smith's license as a real estate broker under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.
- H. Fine. Smith agrees to pay a civil penalty of \$1,000. Said penalty is authorized under § 339.205, RSMo Supp. 2012.
- a. Smith agrees to pay the \$1,000 civil penalty by certified check made payable to the "Missouri Real Estate Commission, State of Missouri" and mailed to Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Smith shall postmark and mail or hand

deliver said check within 60 days of the date when this Settlement Agreement becomes effective.

- b. Funds received pursuant to this agreement shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution. Section 339.205.8, RSMo. Supp. 2012.
- c. In the event the MREC determines that Smith has failed to pay any portion of the \$1,000 agreed upon herein or has violated any other term or condition of this Settlement Agreement, the MREC may, in its discretion: (1) notify the Attorney General who "may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed" under § 339.205.4, RSMo Supp. 2012; (2) after an evidentiary hearing, vacate and set aside the penalty imposed herein and may probate, suspend, revoke, or otherwise lawfully discipline Smith's license under § 324.042, RSMo. Supp. 2012; and (3) deny, discipline, or

refuse to renew or reinstate Smith's license under §
339.205.7, RSMo Supp. 2012.

- I. Broker Acknowledgment. If at any time during the disciplinary period Smith wishes to transfer his license affiliation to a new broker or brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Smith must obtain the Broker Acknowledgement form from the MREC.

15. Upon the expiration of the disciplinary period, the license of Smith shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Smith has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Smith's license.

16. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

17. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Smith of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

18. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

19. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Smith agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

20. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

21. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be

changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

22. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

23. Smith, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in

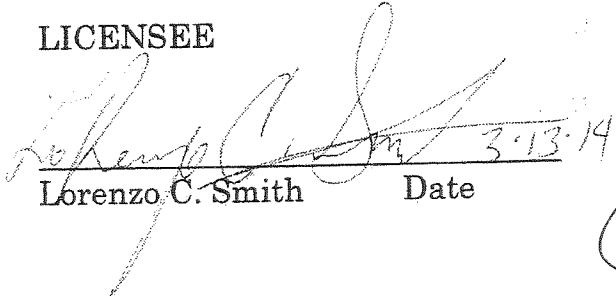
perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

24. Smith understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Smith's license. If Smith desires the Administrative Hearing Commission to review this Settlement Agreement, Smith may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

25. If Smith requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Smith's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Smith as allowed by law. If Smith does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into

effect 15 days after the document is signed by the Executive Director of the
MREC.

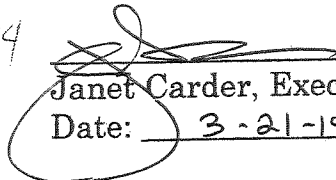
LICENSEE


Lorenzo C. Smith

Date

3-13-14

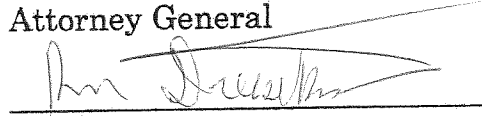
Missouri Real Estate Commission


Janet Carder, Executive Director

Date: 3-21-14

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